



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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NOTICE OF RESPONSIBILITY
Pursuant to M.G.L. ch. 21E and 310 CMR 40.0000

URGENT LEGAL MATTER: PROMPT ACTION NECESSARY

November 8, 2004

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Captain James F. Stader
Commanding Officer
Engineering Field Activity, Northeast
Naval Facilities Engineering Command
10 Industrial Highway, Mail Stop No. 82
Lester, PA 19113-2090

RE: RTN 4-18735
ROCKLAND – Fire Fighting Training Area
Former South Weymouth Naval Air Station
Notice of Responsibility
M.G.L. Chapter 21E and 310 CMR 40.0000

Dear Captain Stader:

This letter constitutes a Notice of Responsibility under the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. ch. 21E ("M.G.L. ch. 21E" or "Chapter 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000 ("MCP") to the Department of the Navy regarding the Fire Fighting Training Area (the "Site") identified in the September 2004 *Record of Decision for Operable Unit 4, Fire Fighting Training Area, Naval Air Station South Weymouth* ("CERCLA ROD" or "ROD") issued under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601, *et seq.* ("CERCLA"), as amended.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

DEP on the World Wide Web: <http://www.mass.gov/dep>

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As the Navy is aware, the CERCLA ROD for the Site was signed by the Navy and the United States Environmental Protection Agency in September 2004. The Massachusetts Department of Environmental Protection (the Department) concurred with the CERCLA ROD pursuant to a letter dated September 22, 2004. The CERCLA ROD contains a "No Action under CERCLA" decision, which was based on the determination that the petroleum found to be present at the Site is not a "hazardous substance" under CERCLA, and, in general, CERCLA does not regulate petroleum releases. However, information submitted to the Department, including the 1998 Phase I RI (Remedial Investigation) Study referred to in the CERCLA ROD, the CERCLA ROD and other investigations conducted pursuant to CERCLA, indicates that there is or has been a release of oil and/or hazardous material at the Site that requires one or more response actions under M.G.L. ch. 21E and the MCP. Based on this information, the Department has reason to believe that the Site is a disposal site under M.G.L. ch. 21E and the MCP. Accordingly, the Department is issuing this Notice to the Navy to inform it of its legal responsibilities under state law for assessing and remediating the release at the Site.

As specified below in greater detail, the Navy's responsibilities under M.G.L. ch. 21E and the MCP at the Site include achieving a level of No Significant Risk at the Site and meeting all Interim Deadlines established by the Department, including those set forth in this Notice. The Department has also determined that its direct oversight is necessary to ensure that adequate response actions will be conducted, including the requirement that all response actions obtain prior approval from the Department, and all submittals be provided to and approved by the Department, before such response action or submittal may be considered complete.

For purposes of this notice, the terms and phrases used herein shall have the meaning ascribed to them by the MCP unless the text clearly indicates otherwise.

STATUTORY LIABILITIES

The Department has reason to believe that the Navy is a Potentially Responsible Party (PRP) with liability under M.G.L. ch. 21E, § 5, for response action costs. Section 5 of M.G.L. ch. 21E makes the following parties liable to the Commonwealth of Massachusetts: current owners or operators of a site from or at which there is or has been a release/threat of release of oil or hazardous material; any person who owned or operated a site at the time hazardous material was stored or disposed of; any person who arranged for the transport, disposal, storage or treatment of hazardous material to or at a site; any person who transported hazardous material to a transport, disposal, storage or treatment site from which there is or has been a release/threat of release of such material; and any person who otherwise caused or is legally responsible for a release/threat of release of oil or hazardous material at a site.

This liability is "strict", meaning it is not based on fault, but solely on the Navy's status as an owner, operator, generator, transporter or disposer. It is also joint and several, meaning that the Navy may be liable for all response action costs incurred at the site, regardless of the existence of any other liable parties.

The MCP requires responsible parties to take necessary response actions at properties where there is or has been a release or threat of release of oil and/or hazardous material. If the Navy does not take the necessary response actions, or fails to perform them in an appropriate and timely manner, the Department is authorized by M.G.L. ch. 21E to have the work performed by its contractors. By taking such actions, the Navy can avoid liability for response action costs incurred by the Department and its contractors in performing these actions, and any sanctions which may be imposed for failure to perform response actions under the MCP.

A responsible party may be liable for up to three (3) times all response action costs incurred by the Department. Response action costs include, without limitation, the cost of direct hours spent by Department employees arranging for response actions or overseeing work performed by persons other than the Department or their contractors, expenses incurred by the Department in support of those direct hours, and payments to the Department's contractors. (For more detail on cost liability, see 310 CMR 40.1200.)

In addition to the potential liability for up to three (3) times all response action costs incurred by the Department, a responsible party may also be liable to the Commonwealth for damages to natural resources caused by any release. Civil and criminal liability may also be imposed under M.G.L. ch. 21E, § 11, and civil administrative penalties may be assessed by the Department under M.G.L. ch. 21A, § 16 for each violation of M.G.L. ch. 21E, the MCP, or any order, permit or approval issued thereunder.

RESPONSE ACTIONS TAKEN TO DATE AT THE SITE

Response actions taken to date have been conducted by the Navy under the Installation Restoration (IR) Program and CERCLA, including a preliminary assessment (PA), a site investigation (SI), and a remedial investigation (RI). Subsequent test pit excavations in April 2002 confirmed the presence of separate-phase petroleum in the shallow subsurface at the site. In September 2004, as discussed above, the Navy and USEPA-Region I, with state concurrence, signed a Record of Decision which documented agreement that: (1) no further action was warranted under CERCLA at the site because petroleum found to be present at the Site is not a "hazardous substance" under CERCLA, and, in general, CERCLA does not regulate petroleum releases, and (2) "Petroleum residuals at the site will be addressed pursuant to applicable Massachusetts state law."

NECESSARY RESPONSE ACTIONS

1. Necessary Response Actions Include Removal Actions

All necessary and required response actions shall not have been conducted at the Site unless and until a level of No Significant Risk exists or has been achieved and a Class A Response Action Outcome has been achieved (310 CMR 40.1003(1)). Such response actions must include eliminating or controlling "sources" of oil and/or hazardous materials, including non-aqueous phase liquids, resulting or likely to result in an increase in concentrations in an environmental

medium (310 CMR 40.1003(5)(a)(4)). Pursuant to information presented to the Department, such sources are present at the Site in the form of separate-phase petroleum, as indicated below:

1. Separate-phase petroleum was observed at the Site in test pits excavated during April 2002; and
2. Information obtained during the CERCLA RI (Remedial Investigation) and April 2002 test pit excavations indicate that separate-phase petroleum is present in the shallow subsurface (less than 4 feet bgs) in the vicinity of test pit locations DTP-1, DTP-2, DTP-4, DTP-5, DTP-7, DTP-8, and DTP-9 and the four former burn pits.

Therefore, based on information presented to the Department, *the Department has determined that additional on-Site removal actions must be conducted under the MCP* to achieve a level of No Significant Risk and a Response Action Outcome.

2. Regulatory Options: Tier Classification and Comprehensive Response Actions (“Option One”) or Release Abatement Measure (“Option Two”)

The Department has identified two regulatory options the Navy may use to attain the required Response Action Outcome at the Site. Option One requires Tier Classification (310 CMR 40.0500) and completion of Comprehensive Response Actions (310 CMR 40.0800). *Option Two*, which may be available depending on the circumstances at the Site, requires the completion of a Release Abatement Measure (310 CMR 40.0440). As determined above, each option requires conducting additional on-Site removal actions in the area where separate-phase petroleum exists (refer to previous paragraph) *and* attaining a Response Action Outcome.

Under the MCP a Release Abatement Measure (Option Two) is a voluntary measure that allows for accelerated remedial actions, is limited in scope and complexity, and can lead to a Response Action Outcome. If available, a Release Abatement Measure may result in earlier completion of remedial actions than would otherwise be the case, often at a cost-savings to the performing party. Given the amount of investigation that has already occurred at the Site and the nature of the cleanup, a Release Abatement Measure may be an appropriate, streamlined approach to the cleanup. Notwithstanding that fact, a Release Abatement Measure is only available if the requirements of 310 CMR 40.0440 are satisfied.

3. Interim Deadlines

Pursuant to 310 CMR 40.0167 the Department hereby establishes the following deadlines as enforceable Interim Deadlines. Whether the Navy chooses Option One or Option Two, as described above, the following deadline applies:

Deadline for Choosing Option One or Option Two:

1. Within thirty (30) days of the date of the issuance of this Notice, the Navy must notify the Department in writing (a) acknowledging that the Navy has been notified, pursuant to this

Notice, of its potential liabilities under the MCP and the actions which the Department currently determines are necessary to respond to the release, (b) indicating its intention to undertake all necessary response actions at the Site pursuant to the MCP and this Notice, including by meeting the relevant Interim Deadlines established below in this Notice, and (c) informing the Department as to whether the Navy will be Tier Classifying and conducting Comprehensive Response Actions (Option One) or conducting a Release Abatement Measure (Option Two), in each case in accordance with the requirements of the MCP and the relevant Interim Deadlines established below in this Notice. If the Navy's notice indicates that the Navy has chosen to conduct a Release Abatement Measure (Option Two), such notice must also include the Navy's determination that the proposed Release Abatement Measure leading to a Response Action Outcome would be consistent with the requirements of 310 CMR 40.0440.

To account for the fact that two sets of regulatory options are available to the Navy, as described above, the Department has established the following two sets of Interim Deadlines, the first set applicable if the Navy chooses Option One, as described above, and the second set applicable if the Navy chooses Option Two, as described above.

Additional Deadlines Applicable to Option One (Comprehensive Response Actions):

If the Navy chooses Option One, described above, the following additional Interim Deadlines apply:

1. Within one hundred and twenty (120) days of the date of the issuance of this Notice, the Navy must submit to the Department a Tier Classification Submittal (310 CMR 40.0510(2)) and a Phase III Remedial Action Plan (310 CMR 40.0861);
2. Within two hundred and ten (210) days of the date of the issuance of this Notice, the Navy must submit to the Department a Phase IV Remedy Implementation Plan (310 CMR 40.0874); and
3. Within three hundred and sixty-five (365) days of the date of the issuance of this Notice, the Navy must submit to the Department a Response Action Outcome (RAO) Statement (310 CMR 40.1000).

Additional Deadlines Applicable to Option Two (Release Abatement Measure):

If the Navy chooses Option Two, described above, the following additional Interim Deadlines apply:

1. Within one hundred and eighty (180) days of the date of the issuance of this Notice, the Navy must submit a Release Abatement Measure (RAM) Plan (310 CMR 40.0444);

2. Within 270 (two hundred and seventy) days of the date of the issuance of this Notice, the Navy must submit a RAM Completion Report (310 CMR 40.0446); and
3. Within three hundred and sixty-five (365) days of the date of the issuance of this Notice, the Navy must submit to the Department a Response Action Outcome (RAO) Statement (310 CMR 40.1000).

The Department's decision to establish Interim Deadlines in accordance with 310 CMR 40.0167 is not subject to M.G.L. ch. 30A or any other law governing adjudicatory proceedings.

4. Direct Oversight

The Department has determined pursuant to 310 CMR 40.0100(1)(d) that direct oversight is necessary to ensure that adequate response actions will be conducted. *Accordingly, the Department is requiring that all response actions obtain prior approval from the Department, and that all submittals be provided to and approved by the Department, before such response actions and submittals may be considered complete.* Submittals requiring approval include all submittals described in this Notice and the Response Action Outcome Statement.

The Department encourages parties having potential liability under M.G.L. ch. 21E to take prompt action in response to releases and threats of releases of oil and/or hazardous material and/or to ensure that on-going response actions are performed in a timely manner and in accordance with M.G.L. ch. 21E and the MCP.

All future communications regarding this release must reference the Release Tracking Number 4-18735 and all future correspondence should be directed to the Project Manager, David Chaffin, at the above listed address. If the Navy has any questions relative to this notice, or for more information regarding the status of response actions, please contact Mr. Chaffin: 617-348-4005.

Sincerely,



Jay Naparstek
Deputy Division Director
Bureau of Waste Site Cleanup

CC: M. Krivansky, USN-Lester
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